



APR - 1 1997 REGISTERED MAIL - RETURN RECEIPT REQUESTED

Modern Engineering Services Ltd.
P.O. Box 1727
Islamabad, Pakistan

also known as

Engineering and Technical Services
P.O. Box 2639
Islamabad, Pakistan

Gentlemen/Ladies:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that Modern Engineering Services Ltd., also known as Engineering and Technical Services (hereinafter "MES"), has violated the Export Administration Regulations (61 *Fed. Reg.* 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (hereinafter the "Act"),² as set forth below.

Facts constituting violations:

Charge 1

On or about April 1, 1992, a U.S. exporter, based on information provided to it by MES, represented on an export license application, an export control document as defined in Section

¹ The relevant events occurred in 1992. The governing Regulations are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 C.F.R. Parts 730-774, establish the procedures that apply to the matters set forth in this charging letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 *Fed. Reg.* 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).



770.2 of the former Regulations, that MES was located at House No. 2262 I-10/2, Islamabad, Pakistan, when in fact it was not. BXA alleges that, by making a false or misleading misrepresentation, statement, or certification of material fact, directly or indirectly, to the Bureau of Export Administration, in connection with the preparation, submission, issuance, use or maintenance of an export control document, MES committed one violation of Section 787.5(a)(1) of the former Regulations.

Charge 2

On or about November 27, 1992, a U.S. exporter, based on information provided to it by MES, represented on an export license application, an export control document as defined in Section 770.2 of the former Regulations, that MES was located at No. 1 Street #17, f-8/3 Rawalpindi, Islamabad, Pakistan, when in fact it was not. BXA alleges that, by making a false or misleading misrepresentation, statement, or certification of material fact, directly or indirectly, to the Bureau of Export Administration, in connection with the preparation, submission, issuance, use or maintenance of an export control document, MES committed one violation of Section 787.5(a)(1) of the former Regulations.

Accordingly, MES is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

- a. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1));
- b. Denial of export privileges (see Section 764.3(a)(2)); and/or
- c. Exclusion from practice (see Section 764.3(a)(3)).

Copies of relevant Parts of the Regulations are enclosed.

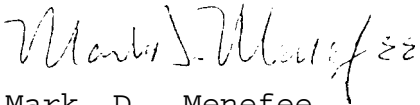
If MES fails to answer the charges contained in this letter within 30 days after service as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

MES is further notified that it is entitled to an agency hearing on the record as provided by Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth

in this charging letter. Accordingly, MES's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gav Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5 of the Regulations. In addition, a copy of MES's answer should be served on BXA at the address set forth in Section 766.5, adding "ATTENTION: Jeffrey E.M. Joyner, Esq." below the address. Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)	
)	
MODERN ENGINEERING SERVICES, LTD.)	97-BXA-0 1
P.O. Box 1727)	
Islamabad, Pakistan,)	
)	
also known as)	
)	
ENGINEERING AND TECHNICAL SERVICES)	
P.O. Box 2639)	
Islamabad, Pakistan,)	
)	
Respondent.)	

RECOMMENDED DECISION AND ORDER

On April 1, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating this administrative proceeding against Modern Engineering Services, Ltd., also known as, Engineering and Technical Services (MES). The charging letter alleged that MES committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).*

¹ The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being

Specifically, the charging letter alleges that on or about April 1, 1992, and November 27, 1992, U.S. exporters, based upon information provided to them by MES, represented on export license applications, export control documents as defined in Section 770.2 of the former Regulations, that MES was located at House No. 2262 I-10/2, Islamabad, Pakistan, and No. 1 Street #17, f-8-3 Rawalpindi, Islamabad, Pakistan, respectively, when in fact MES was not located at either of those addresses. BXA alleges that by making false and misleading misrepresentations, statements, or certifications of material fact, directly or indirectly, to BXA, in connection with the preparation, submission, issuance, use, or maintenance of an export control document, MES committed two violations of Section 787.5(a)(1) of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent "[b]y mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address." BXA has established that notice of the issuance of the charging letter was served on MES in accordance with Section 766.3(b)(1) of the Regulations. BXA submitted evidence that proves that on April 1, 1997, BXA sent the charging letter by registered mail to MES at MES's last known addresses.

BXA contends that the date of service should be June 30, 1997, as that is the date that MES constructively refused service of the charging letter. BXA's contention is based upon Section 766.3(c) of the Regulations, which provides that "[t]he date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding ... is the date of its delivery, or of its attempted delivery if delivery is refused." In this case, as BXA alleges, the

that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & supp. 2000)).

date of attempted delivery shall be used as MES has constructively refused service of the charging letter.

I further find that June 30, 1997 shall be the date of attempted delivery. BXA has stated that the United States Postal Service informed BXA that it takes a maximum of 90 days for a letter sent by registered mail from the United States to reach Pakistan. Therefore, as the charging letter was sent on April 1, 1997 from the United States, it is appropriate to find that the letter reached Pakistan no later than June 30, 1997.

Section 766.6(a) of the Regulations provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter..." Hence, since service was effected on June 30, 1997, MES's answer to the charging letter was due no later than August 1, 1997. MES did not file an answer to the charging letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that those facts establish that MES committed two violations of Section 787.5(a)(1) of the former Regulations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before the Department of Commerce, and/or a denial of export privileges. See 15 C.F.R. §764.3 (2000).

Because MES violated the former Regulations by providing BXA with false information in connection with export license applications, BXA suggests that I recommend to the Under

Secretary for Export Administration³ that all of MES's export privileges be denied for ten years, for the following reasons.

First, MES caused U.S. exporters to provide BXA with false addresses on export license applications in attempts to procure U.S.-origin commodities. Further, MES has constructively refused service of process. BXA has attempted to locate MES in Pakistan and contact MES by using MES's various addresses, telephone numbers and fax numbers, but to no avail.

Also, imposing a civil penalty in this case would be inappropriate. MES can not be found and any efforts to collect a monetary penalty from a foreign entity would in all likelihood be unsuccessful. In light of these circumstances, the denial of all MES's export privileges for ten years is the appropriate sanction.

Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against MES denying all of its export privileges for a period of ten years.⁴

Accordingly, I am referring my recommended decision and order to the Under Secretary for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

³ Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

⁴ Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the interim rule.

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order.

15 C.F.R. § 766.22(c).

Dated: 11/21/00


Administrative Law Judge

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of)	
)	
MODERN ENGINEERING SERVICES, LTD.)	97-BXA-0 1
P.O. Box 1727)	
Islamabad, Pakistan,)	
)	
also known as)	
ENGINEERING AND TECHNICAL SERVICES)	
P.O. Box 2639)	
Islamabad, Pakistan,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On April 1, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter “BXA”), issued a charging letter initiating this administrative proceeding against Modem Engineering Services, Ltd., also known as, Engineering and Technical Services (MES). The charging letter alleged that MES committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000) and Pub. L. No. 106-508) (the

¹ The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

Act).² Specifically, the charging letter alleges that on or about April 1, 1992, and November 27, 1992, U.S. exporters, based upon information provided to them by MES, represented on export license applications, export control documents as defined in Section 770.2 of the former Regulations, that MES was located at House No. 2262 I-10/2, Islamabad, Pakistan, and No. 1 Street #17, f-8-3 Rawalpindi, Islamabad, Pakistan, respectively, when in fact MES was not located at either of those addresses. BXA alleges that by making false and misleading misrepresentations, statements, or certifications of material fact, directly or indirectly, to BXA, in connection with the preparation, submission, issuance, use, or maintenance of an export control document, MES committed two violations of Section 787.5(a)(1) of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent "[b]y mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address." BXA has established that notice of issuance of the charging letter was served on MES in accordance with Section 766.3(b)(1) of the Regulations. BXA presented evidence that on April 1, 1997, BXA sent the charging letter by registered mail to MES at MES's last known address.

As to the date of service, BXA alleges that June 30, 1997 should be the date of delivery as that is the date MES constructively refused service of process. BXA's position is based upon

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 9 17 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)). The Act was reauthorized on November 13, 2000. See Pub. L. No. 106-508, November 13, 2000.

Section 766.3(c) of the Regulations, which provides that “[t]he date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding . . . is the date of its delivery, or of its attempted delivery if delivery is refused.” I find that June 30, 1997 shall be the date of attempted delivery. As stated above, BXA sent the charging letter to MES’s last known addresses by registered mail. BXA also presented evidence that it made diligent and good faith efforts to locate MES, including visiting MES’s last known address in Pakistan and trying to send the charging letter by facsimile to MES’s last known fax number, as BXA did not receive a return receipt for the charging letter. Further, BXA has stated that the United States Postal Service informed BXA that it takes a maximum of 90 days for a letter sent by registered mail from the United States to reach Pakistan. Hence, as the charging letter was sent on April 1, 1997, it is appropriate to find that the charging letter reached Pakistan no later than June 30, 1997.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter....” Hence, as service was effected on June 30, 1997, MES’s answer to the charging letter was due no later than August 1, 1997. MES did not file an answer to the charging letter. MES is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved the Administrative Law Judge (hereinafter the “ALJ”) to find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute

two violations of Section 787.5(a)(1) of the former Regulations by MES, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for the violations is a denial of MES's export privileges for ten years.

As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of ten years from the date of this Order, Modem Engineering Services, House No. 2262 I-10/2, Islamabad, Pakistan, also known as Engineering and Technical Services, No. 1 Street #17, f-8-3 Rawalpindi, Islamabad, Pakistan, and all of its successors or assigns, officers, representatives, agents, and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to

be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or

controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on MES and on BXA, and shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: 11/14/00



William A. Reinsch
Under Secretary for
Export Administration